

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.	:	09/480,643	Confirmation No.	:	4561
Applicant	:	MOORE, et al.			
Assignee	:	International Business Machines Corporation			
Title	:	Method and System for Local Wireless Commerce			
Filed	:	January 11, 2000			
TC/A.U.	:	3627			
Examiner	:	LANEAU, Ronald			
Docket	:	BOC990080US1			
Customer No.	:	52023			

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is being filed together with the fee of \$500.00 as set forth in 37 CFR 41.20(b)(2) along with the fee of \$120.00 as set for in 37 CFR 1.17(a)(1) for a one month extension of time. The fee for appeal was timely filed with the Notice of Appeal on June 10, 2006. If the fees paid are deemed to be insufficient, authorization is hereby given to charge any deficiency to the undersigned's Deposit Account No. 503611.

TABLE OF CONTENTS

I.	REAL PARTIES IN INTEREST	4
II.	RELATED APPEALS AND INTERFERENCES.....	5
III.	STATUS OF CLAIMS	6
IV.	STATUS OF AMENDMENTS	7
V.	SUMMARY OF CLAIMED SUBJECT MATTER	8
A.	Introduction.....	8
B.	Claims 1, 3, 5, and 6	8
C.	Claims 9 and 10	9
D.	Claim 14.....	10
E.	Claims 15, 16, 17, and 18	11
F.	Claims 19, 20, and 21	12
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	14
VII.	ARGUMENT	15
A.	Summary	15
B.	Cited References	15
1.	Fano.....	15
2.	Woodward.....	16
3.	Carlton-Foss.....	17
C.	Rejection under 35 U.S.C. § 103(a) over Fano in view of Woodward in further view of Carlton-Foss.....	18

1. Claims 1, 3, 5, and 6	18
2. Claims 9 and 10	22
3. Claim 14.....	24
4. Claims 15, 16, 17, and 18	24
5. Claims 19, 20, and 21	25
D. Conclusion	26
XIII. CLAIMS APPENDIX.....	28
IX. EVIDENCE APPENDIX.....	34
X. RELATED PROCEEDINGS APPENDIX.....	35

I. REAL PARTIES IN INTEREST

The real party in interest is International Business Machines Corporation, the assignee of record.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1, 3, 5, 6, 9, 10, and 14-21 are pending in the application and stand rejected under 35 U.S.C. § 103(a) as being unpatentable U.S. Patent No. 6,317,718 to Fano (Fano) in view of U.S. Patent No. 6,434,159 to Woodward et al. (Woodward), in further view of U.S. Patent No. 6,647,373 to Carlton-Foss (Carlton-Foss).

Claims 2, 4, 7, 8, 11, 12, and 13 have been cancelled.

Claims 1, 3, 5, 6, 9, 10, and 14-21 are on appeal.

IV. STATUS OF AMENDMENTS

An amendment dated February 14, 2006, was filed in response to the Final Office Action which was mailed on December 12, 2005 (Final Office Action). An Advisory Action was mailed March 6, 2006, which indicated that the proposed amendments were entered for purposes of appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Introduction

The Appellants' invention relates to conducting commerce between merchants and a potential customer to implement a competitive bidding process. Bids are transferred between merchant system(s) that are local to a potential customer's mobile device directly via short range, ad-hoc, wireless communication links. Locality of merchant systems is determined through proximity of the customer's mobile device with the merchant systems as opposed to an actual location of the mobile device. The user's mobile device can be configured to forward bids received from one merchant system directly to other merchant systems over such short range, ad-hoc, wireless communication links. The mobile device further can compare offers from merchants to identify a "best" offer. The Appellants' invention utilizes a configuration that precludes the use of a centralized system as communications take place directly between the customer's mobile device and local merchant systems.

B. Claims 1, 3, 5, and 6

Claim 1 recites a system for communication of a proposed commercial transaction in a local area. Page 1, lines 4-9. The system includes a mobile wireless device associated with a consumer. Page 12, lines 9-12; FIG. 2; page 13, line 18 – page 14, line 4. The mobile wireless device includes a storage for receiving and storing information related to consumer preferences relating to a proposed transaction for the purchase of a good or service and an antenna for communicating directly with local merchants in the local area over a short range, ad-hoc, wireless communication link. Page 6, lines 20-22; FIG. 2; page 13, line 18 – page 15, line 13, FIG. 3; FIG. 7; page 20, lines 10-24.

A short range wireless communications system, associated with a first merchant of a proposed offer, is adapted to communicate with the mobile wireless device within the local area. Page 10, line 5 – page 11, line 5; FIG. 7; page 20, line 10 – page 22, line 3. The local area is defined by proximity of the mobile wireless device to the short range wireless communication system and physical coverage of the short range wireless communication system. Page 13, lines 8-17; page 20, lines 10-19. As such, the short range wireless communications system transmits the proposed offer directly to the mobile wireless device associated with the consumer. Page 6, lines 20-22; page 21, lines 3-14.

The mobile wireless device includes a system that receives a user input indicating that the information from the first merchant regarding the proposed transaction is to be transmitted to a second merchant within the local area. The mobile wireless device transmits the information received from the first merchant directly to the second merchant over another short range wireless, ad-hoc, communication link in response to the user input. Page 10, lines 13-15; page 18, line 14 – page 20, line 5; page 20, line 18-19; page 21, line 21 – page 22, line 3. The system facilitates price comparison and competitive bidding among merchants local to the user's mobile wireless device.

C. Claims 9 and 10

Claim 9 recites a system for conducting an auction between two merchants where each merchant has a fixed location. A consumer can be located proximate to the two merchants and have a mobile wireless device. The system can include a mobile wireless device associated with the consumer. Page 12, lines 9-12; FIG. 2; page 13, line 18 – page 14, line 4. The mobile wireless device can include a memory for storing details of a proposed transaction and a

communications device for exchanging messages directly with at least a first merchant and a second merchant in relation to the proposed transaction. FIG. 2; page 13, line 18 – page 15, line 13; FIG. 3; page 18, line 14 – page 20, line 5; page 20, lines 10-24. The messages are exchanged over short range, ad-hoc, wireless communication links. Page 10, lines 13-15; FIG. 7; page 20, line 10 – page 22, line 3. The mobile device includes a comparator that compares the messages from the first merchant and the second merchant to determine which message offers the better deal. Page 19, line 21 – page 20, line 5; page 21, line 12 – page 22, line 3.

The system further can include a transmission system that, responsive to the comparison in the mobile device, sends at least one merchant the details of the better deal. The transmission system further receives a message from at least one merchant in response to the details of the better deal. Page 18, lines 14-23; page 21, lines 19-22. The communications between the mobile wireless device and the merchants are exchanged directly between one another without utilization of a central processing system, i.e., using short range, ad-hoc, wireless communication links. Page 6, lines 20-22; FIG. 7; page 20, lines 10-24.

D. Claim 14

Claim 14 recites a program stored on a storage medium that is adapted to be read by an information handling system. The program includes a first module for storing consumer preferences and a second module for transmitting consumer preferences directly to individual merchant systems over short range, ad-hoc, wireless communication links in response to an interrogation by an external system, i.e., a merchant system. FIG. 3; page 6, lines 20-22; FIG. 7; page 14, line 5 – page 15, line 13; page 20, lines 10-24.

The program further can include a third module for receiving bids from the external system and for storing those bids. A fourth module is included for comparing bids to determine the best bid and for receiving an input at a mobile device whether to communicate a bid from one bidder to a second bidder. Page 19, line 21 – page 20, line 5; page 21, line 12 – page 22, line 3. If sending is indicated, the fourth module sends the best bid to an other bidder directly over a short range, ad-hoc, wireless communication link. Page 18, lines 18-19; page 19, line 21 – page 20, line 5.

A fifth module is included which displays the best bid received so that the consumer can acknowledge the bid. Page 18, lines 5-6. Each individual merchant system with which communication is established is determined via proximity and a physical coverage area of the individual merchant system. Page 13, lines 8-17; page 20, lines 10-19.

E. Claims 15, 16, 17, and 18

Claim 15 recites a system for communicating between a consumer and potential merchants with respect to a proposed transaction for the purchase of goods or services. The system includes a wireless device associated with the consumer and a plurality of short range, wireless communication systems. The wireless device can include a system for receiving and transmitting information directly to and from individual merchant systems over short range, ad-hoc, wireless communication links about a potential purchase and receiving a consumer input. Page 6, lines 20-22; page 10, lines 13-15; page 12, lines 9-12; FIG. 2; page 13, line 18 – page 15, line 13; page 20, lines 10-19; FIG. 7; page 20, lines 10-24.

Each of at least a first and second merchant is associated with one of the plurality of short range wireless communication systems. FIG. 7, page 20, line 10 – 24. The first and second

merchants are seeking to make a transaction with the consumer relating to the proposed transaction. The short range, wireless communication system associated with the first merchant transmits a first bid directly to the wireless device and receives information relating to the first bid from the wireless device. Page 20, line 20 – page 22, line 3. The wireless device transmits information on the first bid to the short range communication system associated with the second merchant in response to the consumer input. Page 18, lines 14-19; page 19, line 21 – page 20, line 5.

F. Claims 19, 20, and 21

Claim 19 recites a method of proposing commerce between a merchant and a potential customer with a mobile wireless device. The method includes receiving, at the mobile wireless device, a bid sent directly from a first merchant over a short range, ad-hoc, wireless communication link regarding a potential purchase and receiving a customer input. Page 6, lines 21-23; page 10, lines 13-15; FIG. 7; page 14, line 5 – page 15, line 13; page 17, line 17 – page 18, line 13; page 20, line 10 – page 21, line 14. Information regarding the bid from the first merchant is transmitted from the mobile wireless device directly to a second merchant over another short range, ad-hoc, wireless communication link in response to the customer input on the mobile wireless device. Page 18, lines 14-24. The first and second merchants are selected, at least in part, by virtue of proximity and physical coverage of the short range, ad-hoc wireless communication links.

A bid sent directly from the second merchant can be received by the mobile wireless device via the other short range, ad-hoc, wireless communication link regarding the proposed purchase. Page 18, lines 14-24; page 19, line 21 – page 20, line 5. The potential customer can

compare the first bid from the first merchant with the second bid from the second merchant for the potential purchase.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 3, 5, 6, 9, 10, and 14-21 are unpatentable under 35 U.S.C. § 103(a) based on the combination of Fano, Woodward, and Carlton-Foss.

VII. ARGUMENT

A. Summary

The commerce system, methods, and apparatus recited in claims 1, 3, 5, 6, 9, 10, and 14-21 are patentably distinct over the combination of Fano, Woodward, and Carlton-Foss. The cited references do not teach or suggest that offers from merchants can be communicated directly to a user's mobile device via short range, ad-hoc, wireless communication links or that an offer from one merchant can be forwarded from the user's mobile device directly to another merchant system.

Further, the combination of Fano, Woodward, and Carlton-Foss is improper because modifying Fano in the manner suggested would change the principle of operation of Fano. Thus, Fano, Woodward, and Carlton-Foss are insufficient to render claims 1, 3, 5, 6, 9, 10, and 14-21 obvious.

B. Cited References

1. Fano

Fano teaches a centralized system that facilitates location-based shopping. Unlike the Appellants' invention, the Fano system employs a central storage mechanism for storing user profiles and product related information. FIGS. 10A, 17, 25; column 33, lines 9-10; column 29, lines 35-37; and column 29, lines 35-37. Within the centrally managed system, user profiles can be stored within a profile database and product-related information for merchants can be stored within a product information database.

The Fano system utilizes a personal digital assistant (PDA) with a Global Positioning System (GPS) receiver to determine the user's location, as opposed to proximity to individual

merchant systems. Column 47, lines 19-23. The user can create a shopping list of items prior to embarking on a shopping trip. The user further can specify a particular shopping venue, i.e., a shopping mall.

When the user arrives at the shopping venue, the PDA communicates with the centralized system which stores the online catalogs established by merchants. Column 47, lines 25-35. The PDA has knowledge of its location by virtue of the GPS system included therein and determines nearby stores via information exchanged with the centralized system. The Fano system, with reference to the centrally stored merchant catalogs, can assemble a list of the items specified on the shopping list that are available at merchant locations within the shopping venue. Column 47, lines 40-46. In assembling the list of items, a network of information, i.e., user profiles and product related information, can be queried. Abstract. The centralized system provides this information via one or more GPS-enabled information gathering agents having access to the centralized product information database. Abstract.

The centralized nature of the Fano system teaches away from the use of short range, ad-hoc, wireless communication links and/or merchant systems for communicating over such links. Further, Fano does not teach or suggest that an offer received from one merchant can be forwarded directly to another merchant via a user's mobile device.

2. Woodward

Woodward teaches a peer-to-peer system in which a personal presence identifier, which is associated with a user, can be coupled to another peer device through a short-range, two-way wireless link. Abstract. The two devices can exchange "needs specifications" and "capability specifications". Abstract. A "needs specification", as taught by Woodward, is "a list of network

needs currently experienced by the broadcasting peer 20". Column 6, lines 55-57. Exemplary needs, as shown in FIG. 8 of the Woodward specification, correspond to tasks such as appliance personalization, hard copy (print), visual image (display), gateway, financial transactions, etc. As such, the needs specification discussed in Woodward relates to communication network needs and services and is wholly unrelated to shopping and a competitive bidding environment.

FIG. 6 of the Woodward specification teaches how ad-hoc, wireless communication links can be established between a requesting peer device and a target peer device. The transactions that take place are conducted between a requesting peer device and a target peer device to determine whether the target peer device supports the network functions needed by the requesting peer device. If the needs of the requesting peer device correspond to the capabilities of the target peer device, communications can be established and maintained. Woodward does not teach or suggest the comparison of messages between merchants or the routing of messages from one merchant system to another via a customer's mobile device.

3. Carlton-Foss

Carlton-Foss teaches a method and system for exchanging information for a reverse auction. The Carlton-Foss system, like the Fano system and unlike the Appellants' invention, is centrally managed. The Carlton-Foss system includes a host computer system in communication with a request and/or specification database and a bid database. The request and/or specification database includes information about requests for goods to be purchased. The bid database includes information relating to bids from merchants. Column 3, lines 40-55.

Thus, the bids and requests are maintained within the centrally managed system which is available via the Web. As such, Carlton-Foss fails to teach or suggest that communications can

be carried out directly between merchant systems and a user's mobile device over short-range, ad-hoc, wireless communication links. Further, Carlton-Foss fails to teach or suggest that messages from one merchant can be provided to another merchant by way of the user's mobile device.

C. Rejection under 35 U.S.C. § 103(a) over Fano in view of Woodward in further view of Carlton-Foss

1. Claims 1, 3, 5, and 6

Fano, Woodward, and Carlton-Foss are deficient as the combination of these references fails to teach or suggest each limitation of claims 1, 3, 5, and 6. Claim 1 recites a system that includes a mobile device that can communicate directly with local merchant systems over short range, ad-hoc, wireless communication links and further recites a short range wireless communications system associated with a merchant for transmitting the proposed offer directly to the mobile wireless device. As noted, Fano teaches a centralized system in which users can be notified of the availability of selected items for sale. The user's wireless device communicates with the centralized Fano system to obtain seller information stored therein. In this regard, the Final Office Action conceded that "Fano does not disclose a system that communicate[s] directly with local merchants in the local area over a short range wireless communication link".

Fano fails to teach or suggest another limitation of Appellants' claim 1. Claim 1 recites that "the mobile wireless device transmits the information received from the first merchant directly to the second merchant over another short range wireless, ad-hoc communication link in response to a user input." Fano does not teach or suggest that information received from a first merchant can be transmitted directly to the second merchant or that such an exchange is made by

way of the mobile wireless device. As such, not only does Fano not disclose a system that communicates directly with local merchants as conceded, but Fano also fails to teach or suggest each and every limitation of claim 1.

It has been asserted that Woodward discloses a short range wireless communication system that has the capability of comparing messages from different merchants for identifying a better offer. FIG. 6 of the Woodward specification has been cited in support of this contention in the Final Office Action. Woodward, however, does not disclose a system that is capable of comparing messages from different merchants. Indeed, FIG. 6 of Woodward describes the manner in which an ad-hoc communication link can be established between two peer devices. A process for establishing an ad-hoc wireless link is assumed to have occurred in the context of Appellants' claim 1, which goes well beyond the establishment of such a link.

Woodard goes on to note that in forming the communications link, a needs specification and a capability specification are exchanged. Woodward defines a needs specification generally as "a list of network needs currently experienced by the broadcasting peer 20". Column 6, lines 55-56. The capability specification is described as "a list of network capabilities which the broadcasting peer 20 may provide to other peers 20 of network 22." Column 6, lines 56-59. Accordingly, the exchange described by Woodard in FIG. 6 is completely unrelated to an offer from a merchant in the context of shopping or a competitive bidding process. Rather, the exchange is a determination of whether a given target peer device is able to provide the type of network services sought after by a requesting peer device. These transactions, again, relate to establishing the ad-hoc communication link and are wholly unrelated to the exchange of messages as recited in Appellants' claim 1, which assumes that an ad-hoc, wireless communication link has been established.

In any case, the Appellants' claim 1 explicitly states that "information from the first merchant is ... transmitted to a second merchant within the local area". While Woodward discloses two-way communication between peers, Woodward fails to teach or suggest a system in which information received from a first merchant is transmitted directly to a second merchant by a mobile device. As noted, the transactions described with reference to FIG. 6 of the Woodward specification take place between a requesting peer device and a target peer device to determine whether a connection is to be established. Column 7, line 63 – column 8, line 9. Again, the Appellants' claim 1 assumes that such a connection exists. Still, Woodward does not teach or suggest that the requesting peer performs any comparison of services offered by multiple target peers to select a best match as suggested. That is, Woodward does not describe a process where a peer selects one target peer device over another due to a comparison of services offered by those peers.

Notwithstanding the deficiencies of both Fano and Woodward, the combination of the two references is inappropriate as the proposed modifications would change the principle of operation of the Fano system. *See* MPEP 2143.01 (VI). Notably, at column 47, lines 24-26, Fano expressly states that "[o]ne advantage of the system is that it enables the retrieval of data for nearby stores without relying on the presence of any special equipment at the mall itself." Because the Fano system is centralized and implemented within a Web-type environment, merchants utilize a computer system and an Internet connection. With the teachings of Fano in mind, any suggestion to modify Fano to include the merchant equipment needed to establish short-range, ad-hoc, wireless communication links directly with the user's device (i.e., wireless access points, computer systems, and/or specialized software) is untenable. In other words, if merchant equipment were located on merchant premises so that short-range, ad-hoc wireless

communication links could be established directly between the user's device and the merchant systems, i.e., within a mall, the stated advantage of the Fano system would be defeated. Such a combination is improper as it changes the principle of operation of Fano from one of a centralized system implemented on the Web, to that of a localized system requiring specialized equipment on each of a plurality of merchant premises. Such a modification is contrary to Fano's stated objective.

Carlton-Foss fails to cure the deficiencies of Fano and Woodward. Carlton-Foss teaches a reverse auction system. Like the Fano system, the Carlton-Foss system is a centralized system that is implemented using the Web. As such, the Carlton-Foss system does not route communications directly between bidders and/or requestors. Rather, information is stored and processed using a centralized auction processor. Column 5, lines 32-62; FIG. 1. Accordingly, Carlton-Foss also lacks any teaching or suggestion of the use of short-range, ad-hoc, wireless communication links or the ability to send received information from one merchant to another merchant via the user's mobile device as explicitly recited in Appellants' claim 1.

In this regard, the combination of Carlton-Foss with Fano and Woodward also is inappropriate as any suggestion to incorporate short range, ad-hoc, wireless communications of Woodward into either Fano or Carlton-Foss would change the principle of operation of both references. *See* MPEP 2143.01 (VI).

In addition, the suggested motivation for combining Carlton-Foss with Fano and Woodward, as stated in the Final Office Action, was that "[b]y incorporating an auction format, which is available to a wide audience by electronic means, the inventive system results in more bidders, greater response, and hence lower costs and greater value for the requestor." Indeed, at column 1, lines 8-13, Carlton-Foss states:

Because this electronic system reaches a geographically diverse audience, requests become visible in areas where they are not ordinarily available for suppliers to notice them and respond to a request, resulting in increased supplier response without significant increase in purchasing costs.

At column 4, lines 23-29, Carlton-Foss goes on to state that “it would not be possible to operate an equivalent twenty-four hour per day, seven-day per week procurement auction with an unlimited number of requests and potentially thousands if not millions of proposers without such an inventive electronic reverse auction method and system.”

Clearly Carlton-Foss seeks to expand the field of bidders by virtue of the fact that the system is centralized and accessible via the Web. The motivation to combine Carlton-Foss with Fano and Woodward, as stated in the Final Office Action is contrary to the principle of limiting participation in the bidding process using a short-range, ad-hoc, wireless network as recited by the Appellants’ claim 1. The stated object of Carlton-Foss is to expand the system’s reach into a geographically diverse area whereas the Appellants’ invention deliberately seeks to limit the geographic area in which the system operates with respect to both users and merchants.

In sum, neither Carlton-Foss nor Fano teaches or suggests a system in which the user’s device communicates directly with a merchant system over short range, ad-hoc, wireless communication links. None of the cited references teaches or suggests a system in which the user’s mobile device can send information received directly from one merchant to a second merchant via the user’s mobile device.

2. Claims 9 and 10

Fano, Woodward, and Carlton-Foss are deficient as the combination of these references fails to teach or suggest each limitation of claims 9 and 10. Claim 9 recites a system that

includes a mobile device having a communications device for “exchanging messages directly with at least a first merchant and a second merchant related to a proposed transaction over short range, ad-hoc, wireless communication links”. Claims 9 further recites a comparator within the mobile device and a transmission system. The comparator compares “the messages from the first merchant and the second merchant to determine which message offers the better deal”. The transmission system, responsive to the comparison, “send[s] at least one merchant the details of the better deal and [receives] a message from at least one merchant in response to the details of the better deal”.

The combination of Fano, Woodward, and Carlton-Foss is inappropriate with respect to claim 9 for many of the same reasons noted with reference to the Appellants’ arguments made in support of claim 1. Further, Fano does not disclose a comparison process and does not disclose a transmission system that sends details of the better deal to another merchant.

Woodward also lacks any teaching of a comparison of offers to determine a better deal. As noted, the comparison described by Woodward pertains to the comparison of a needs specification and a capability specification, which determines whether a communications link will be established between two peer devices. As noted, this process is unrelated to a comparison of “messages from the first merchant and the second merchant to determine which message offers the better deal” as explicitly recited in Appellants’ claim 9. Woodward further fails to disclose a transmission system that sends details of the better deal from one merchant to another merchant.

As Carlton-Foss is a centralized system like that of Fano, Carlton-Foss also fails to teach or suggest a system in which the mobile device communicates directly with merchants, forwards

offers from one merchant to another, or performs any sort of comparison with respect to such offers within the mobile device.

3. Claim 14

Fano, Woodward, and Carlton-Foss are deficient as the combination of these references fails to teach or suggest each limitation of claim 14. Claim 14 recites modules for “transmitting consumer preferences directly to individual merchant systems over short range, ad-hoc, wireless communication links”. Claim 14 further recites a module for “comparing bids to determine the best bid” and which receives “an input at a mobile device whether to communicate a bid from one bidder to a second bidder”. The module sends the best bid to another bidder “directly over a short range, ad-hoc wireless, communication link” if sending is indicated.

The combination of Fano, Woodward, and Carlton-Foss is inappropriate with respect to claim 14 for the reasons noted in the Appellants’ arguments in support of claim 1. Further, neither Fano, Woodward, Carlton-Foss, nor any combination thereof teaches or suggests the limitations of claim 14 concerning a module that can compare bids to determine the best bid and receive an input at a mobile device whether to communicate a bid from one bidder to a second bidder, and further send the best bid to another bidder directly over a short range, ad-hoc, wireless communication link.

4. Claims 15, 16, 17, and 18

Fano, Woodward, and Carlton-Foss are deficient as the combination of these references fails to teach or suggest each limitation of claims 15, 16, 17, and 18. Claim 15 recites a system including a wireless device associated with a customer that includes “a system for receiving and

transmitting information directly to and from individual merchant systems over short range, ad-hoc, wireless communication links about a potential purchase”. Claim 15 further recites a “plurality of short range wireless communication systems, wherein each of at least a first and a second potential merchant is associated with one of said plurality of short range wireless communication systems”. Claim 15 also recites “the short range wireless communication system associated with the first merchant transmitting directly to the wireless device a first bid from the first merchant” and “wherein said wireless device transmits information on said first bid to the short range wireless communication system associated with the second merchant in response to the consumer input”.

Appellants believe the arguments made in support of claim 1 are applicable to claim 15 as well. In short, the combination of Fano and Woodward is inappropriate for the reasons already set forth. Further, neither Fano, Woodward, Carlton-Foss, nor any combination thereof teaches or suggests a wireless device capable of transmitting information directly to and from individual merchant systems over short range, ad-hoc, wireless communication links about a potential purchase, a plurality of short range wireless communication systems associated with merchants, or the consumer’s wireless device transmitting information on a first bid to the short range wireless communication system associated with the second merchant responsive to consumer input.

5. Claims 19, 20, and 21

Fano, Woodward, and Carlton-Foss are deficient as the combination of these references fails to teach or suggest each limitation of claims 19, 20, and 21. Claim 19 recites a method that includes “receiving in the mobile wireless device a bid sent from a first merchant over a short

range, ad-hoc, wireless communication link regarding a potential purchase” and “transmitting information regarding the bid from the first merchant from the mobile wireless device directly to a second merchant over another short range, ad-hoc, wireless communication link”.

Again, with reference to the Appellants’ arguments in support of claim 1, the combination of Fano and Woodward is not appropriate. Moreover, neither Fano, Woodward, Carlton-Foss, nor any combination thereof teaches or suggests direct communications between a user’s mobile wireless device to a merchant or merchant system or that a bid from a first merchant can be provided from the mobile wireless device directly to a second merchant over short range, ad-hoc, wireless communication links.

D. Conclusion

Appellants’ invention relates to conducting commerce between merchants and a potential customer to implement a competitive bidding process. Bids are transferred between the merchant system(s) and the potential customer’s mobile device directly via short range, ad-hoc, wireless communication links. Further, the user’s mobile device forwards received bids from one merchant system directly to other merchant systems over such short range, ad-hoc, wireless communication links. The mobile device can be configured to compare offers from merchants to identify a “best” offer.

In rejecting each of independent claims 1, 9, 14, 15, and 19 under 35 U.S.C. § 103(a), the Fano, Woodward, and Carlton-Foss references have been inappropriately applied because they do not teach or suggest each limitation recited in the claims. Moreover, modification of Fano, or Carlton-Foss for that matter, in accordance with the teachings of Woodward in the manner

suggested would change the principle of operation of both Fano and Carlton-Foss and, as such, indicates that the cited references lack the requisite motivation to combine.

The Appellants believe that the claimed methods, systems, and apparatus for conducting commerce, as recited in claims 1, 3, 5, 6, 9, 10, and 14-21, are patentably distinct under 35 U.S.C. § 103(a) over all of the references taken singly, or in any combination. It is thus submitted that claims 1, 3, 5, 6, 9, 10, and 14-21 define a patentably distinguishable invention over the prior art made of record, and a Notice of Allowance for these claims is respectfully requested.

Respectfully Submitted,

September 11, 2006

/Kevin T. Cuenot/

Kevin T. Cuenot
Registration No. 46,283
Cuenot & Forsythe, L.L.C.
12230 Forest Hill Blvd., Ste. 120
Wellington, Florida 33414
Tel.: (561) 868-1819
Fax: (561) 423-9295

XIII. CLAIMS APPENDIX

1. A system for communication of a proposed commercial transaction in a local area comprising:

a mobile wireless device associated with a consumer, the mobile wireless device including a storage for receiving and storing information related to consumer preferences and an antenna for communicating directly with local merchants in the local area over a short range, ad-hoc, wireless communication link;

a short range wireless communications system adapted to communicate with the mobile wireless device associated with a consumer within the local area, wherein the local area is defined by proximity of the mobile wireless device to said short range wireless communication system and physical coverage of said short range wireless communication system, said short range wireless communications system being associated with a first merchant of a proposed offer and transmitting the proposed offer directly to the mobile wireless device associated with the consumer; and

the mobile wireless device including a system which receives a user input indicating that the information from the first merchant is to be transmitted to a second merchant within the local area, wherein the mobile wireless device transmits the information received from the first merchant directly to the second merchant over another short range wireless, ad-hoc communication link in response to a user input.

3. A system for communication of a proposed commercial transaction in the local area including the elements of Claim 1 wherein the mobile wireless device associated with the

consumer is a cellular telephone with storage including preferences loaded by the consumer and the short range wireless communications system operates over a limited local area.

5. A system for communication of a proposed commercial transaction in the local area including the elements of Claim 1 wherein the short range wireless communication system complies with the Bluetooth specification.

6. A system for communication of a proposed commercial transaction in the local area including the elements of Claim 1 wherein the offer communicated to the consumer matches the consumer preferences stored in the mobile wireless device.

9. A system for conducting an auction between two merchants each having a fixed location and a consumer located proximate to the two merchants, the consumer associated with a mobile wireless device, the system comprising:

a mobile wireless device associated with the consumer including memory for storing details of a proposed transaction and a communications device for exchanging messages directly with at least a first merchant and a second merchant related to the proposed transaction over short range, ad-hoc, wireless communication links;

a comparator in the mobile device for comparing the messages from the first merchant and the second merchant to determine which message offers the better deal; and

a transmission system responsive to comparison in the mobile device for sending at least one merchant the details of the better deal and for receiving a message from at least one merchant in response to the details of the better deal, wherein the communications between the

mobile wireless device and the merchants are exchanged directly between one another without utilization of a central processing system.

10. A system for conducting an auction including the elements of Claim 9 and further including a system, disposed within the mobile wireless device, for comparing the received message from the merchant in response to the details of the better deal and for communicating that received message directly to another merchant over another one of the short range wireless communication links.

14. A program stored on a storage medium adapted to be read by an information handling system, the program comprising:

- a first module for storing consumer preferences;

- a second module for transmitting consumer preferences directly to individual merchant systems over short range, ad-hoc, wireless communication links in response to an interrogation by an external system;

- a third module for receiving bids from the external system and for storing those bids;

- a fourth module for comparing bids to determine the best bid and for receiving an input at a mobile device whether to communicate a bid from one bidder to a second bidder and, if sending is indicated, sending the best bid to an other bidder directly over a short range, ad-hoc, wireless communication link; and

- a fifth module for displaying the best bid received so that the consumer can acknowledge the bid;

wherein each individual merchant system with which communication is established is determined via proximity and a physical coverage area of the individual merchant system.

15. A system for communicating regarding a proposed transaction between a consumer and potential merchants, the system comprising:

a wireless device associated with the consumer which includes a system for receiving and transmitting information directly to and from individual merchant systems over short range, ad-hoc, wireless communication links about a potential purchase and receiving a consumer input;

a plurality of short range wireless communications systems, wherein each of at least a first and a second potential merchant is associated with one of said plurality of short range wireless communication systems, each of said first and second merchants seeking to make a transaction with the consumer relating to the proposed transaction, the short range wireless communication system associated with the first merchant transmitting directly to the wireless device a first bid from the first merchant and receiving information on the first bid from the wireless device, wherein said wireless device transmits information on said first bid to the short range wireless communication system associated with the second merchant in response to the consumer input.

16. A system for communicating a proposed transaction as provided in Claim 15 and further including a sensor for determining merchants which are proximate to the consumer and his wireless device so that the consumer is dealing with merchants in a defined geographic area, wherein said sensor detects short range wireless networks and does not determine a location for the wireless device or the communication systems associated with the merchants.

17. A system for communicating a proposed transaction of the type set forth in Claim 15 wherein, when the wireless device receives a response from the merchant which includes a proposal of an alternate transaction, the details of the alternate transaction are sent to an other merchant to receive a bid from the other merchant.

18. A system for communicating a proposed transaction of the type set forth in Claim 17 wherein the wireless device includes a screen and displays the communications which have been received from merchants regarding the proposed transaction.

19. A method of proposing commerce between a merchant and a potential customer with a mobile wireless device, the steps of the method comprising:

receiving at the mobile wireless device a bid sent directly from a first merchant over a short range, ad-hoc, wireless communication link regarding a potential purchase and receiving a customer input;

transmitting information regarding the bid from the first merchant from the mobile wireless device directly to a second merchant over another short range, ad-hoc, wireless communication link in response to the customer input at the mobile wireless device; and

receiving at the mobile wireless device a bid sent directly from the second merchant over the other short range, ad-hoc, wireless communication link regarding the proposed purchase, whereby the potential customer may compare the first bid from the first merchant with the second bid from second merchant for the potential purchase;

wherein the mobile wireless device selects the first and second merchants for communication, at least in part, by virtue of proximity and physical coverage of the short range, ad-hoc wireless communication links.

20. A method of proposing commerce between a consumer and a merchant including the steps of Claim 19 wherein the method further includes receiving and transmitting information only within a limited area, whereby the customer is proximate to the merchants at the time of the communications.

21. A method of proposing commerce between a consumer and a merchant including the steps of Claim 19 wherein the method includes storing consumer preferences in the mobile wireless device and the communications includes information from the stored consumer preference.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.